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16 UNITED STATES DISTRICT COURT
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18 CENTRAL DISTRICT OF CALIFORNIA

19 TRAFFICSCHOOL.COM, INC., a
California corporation; DRIVERS ED
20 DIRECT, LLC., a California limited
liability company,

21 Plaintiffs,

22 v.

23 EDRIVER, INC., ONLINE GURU,
INC., FIND MY SPECIALIST, INC.,
24 and SERIOUSNET, INC., California
corporations; RAVI K. LAHOTI, an
25 individual; RAJ LAHOTI, an
individual; DOES 1 through 10,

26 Defendants.
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Case No. CV 06-7561 PA (CWx)

The Hon. Percy Anderson

**DEFENDANTS' EVIDENTIARY
OBJECTIONS TO
DECLARATIONS SUBMITTED IN
SUPPORT OF PLAINTIFFS'
MOTION FOR CONTEMPT**

Complaint Filed: November 28, 2006
Trial Commenced: November 7, 2007

Hearing Information:

Date: February 2, 2009
Time: 1:30 p.m.
Courtroom: 15

Defendants hereby submit their objections to the declarations of Benjamin P. Watson, Thomas Benton Greenhaw, Mina I. Hamilton, Eric Creditor and Daniel C. DeCarlo submitted in support of Plaintiffs' Motion for Contempt Against Defendants. For the convenience of the Court, Defendants have grouped the objections together by declarant and by subject matter because the declarants repeated statements on the same topic that are objectionable for similar reasons.

1. Declaration of Benjamin P. Watson

1.1. Compliance With The Injunction

Testimony Offered:

¶ 4 (p. 1:23-225): "Accordingly, on or about September 5, 2008, I created two sample splash screen in less than on hour that complied with the Injunction on both counts mentioned above."

¶ 6 (p. 2:6-9): "In other words, I do not believe that Defendants used (or are currently using) a 14 point *font* that is required under the Injunction for the disclaimer, but rather have used a smaller 10 point font for the disclaimer text."

¶ 13 (p. 4:22-24): "As noted above, I understand that the Injunction requires that nothing other than the disclaimer text and 'continue' button, and the DMV.ORG logo, shall be visible to visitors to the dmv.org domain when viewing the splash screen."

¶ 13 (p. 4:24-28): "As illustrated in Exhibits A and B, on September 25, 2008, I was able to create two sample splash screens for the DMV.ORG site that complied with the Injunction on this point by simply removing the title tags in the underlying code so that they would not appear in the top blue bar of the browser."

Defendants' Objection:

Lack of foundation and improper legal conclusion and opinion testimony regarding compliance with the Injunction. Fed. R. Evid. 602, 701, 704.

1 Lack of foundation and improper opinion testimony regarding fonts
2 and/or font sizes employed on the DMV.ORG splash screen. Fed. R. Evid. 602,
3 701.

4 The testimony regarding title tags is irrelevant, as not addressed by the
5 injunction, and lacks foundation as to the functioning of such tags on the
6 DMV.ORG website. Fed. R. Evid. 401, 402, 602.

- | | |
|---|--|
| <input type="checkbox"/> Sustained as to ¶ 4 | <input type="checkbox"/> Overruled as to ¶ 4 |
| <input type="checkbox"/> Sustained as to ¶ 6 | <input type="checkbox"/> Overruled as to ¶ 6 |
| <input type="checkbox"/> Sustained as to ¶ 13 | <input type="checkbox"/> Overruled as to ¶ 13 (p. 4:22-24) |
| <input type="checkbox"/> Sustained as to ¶ 13 | <input type="checkbox"/> Overruled as to ¶ 13 (p. 4:24-28) |

11 **1.2. Exhibits to Watson's Declaration**

12 Testimony Offered:

13 ¶ 12 (p. 4:19-21): "Attached hereto as Exhibit 'I' are several articles
14 with highlighted text that discuss title tags and explain their marketing use which is
15 consistent with my general knowledge as described above."

16 Defendants' Objection:

17 Exhibit "I" which consists of an article from 2005 written by Derek
18 Vaughan, comprises inadmissible hearsay, lacks foundation and is irrelevant. Fed.
19 R. Evid. 401, 402, 602, 801, 802.

- | | |
|---|---|
| <input type="checkbox"/> Sustained as to ¶ 12 | <input type="checkbox"/> Overruled as to ¶ 12 |
|---|---|

21 **2. Declaration of Thomas Benton Greenhaw**

22 **2.1. Compliance With The Injunction**

23 ¶ 5 (p. 2): "I have been provided with a copy of the Injunction and
24 reviewed its terms. Essentially, the Injunction requires the presentation of a splash
25 screen to "every visitor" to the Site. After my review of the Injunction and the Site,
26 it is my opinion that the defendants are not in compliance with paragraph 1(a) of the
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1 Injunction which requires that "every visitor" to the Site be presented with the
2 splash screen.

3 ¶ 8 (p. 2): "I have concluded that there are two particular problems that
4 are being encountered in the display of the splash screen to visitors of the Site
5 resulting in the failure of the splash screen to be displayed to every visitor as
6 required by the Injunction."

7 ¶ 18 (p. 5-6): "The site could with the assistance of a capable splash
8 screen designer, display a splash page which conforms entirely with the Court's
9 requirements as set forth in the Injunction, and such a designer could effectively
10 ensure that every visitor to the Site, including mobile devise users, computer users
11 who disable their Java Script or cookie functionality and all others, will be presented
12 with the splash page."

13 Defendants' Objection:

14 Lacks foundation and improper legal conclusion and opinion testimony
15 regarding compliance with the Injunction. Fed. R. Evid. 602, 701, 704.

- | | |
|---|---|
| <input type="checkbox"/> Sustained as to ¶ 5 | <input type="checkbox"/> Overruled as to ¶ 5 |
| <input type="checkbox"/> Sustained as to ¶ 8 | <input type="checkbox"/> Overruled as to ¶ 8 |
| <input type="checkbox"/> Sustained as to ¶ 18 | <input type="checkbox"/> Overruled as to ¶ 18 |

19 **2.2. Practices of Computer Users**

20 Testimony Offered:

21 ¶ 9 (p. 3): "As a consequence of this, in order for the splash screen to
22 be visible to computers users, the end user of the computer (or visitor to the website)
23 must enable the Java Script function on their web browser. In many cases, this is
24 disabled automatically and the user does not make selection or decision."

25 ¶ 11 (p. 3): "In my experience, a significant number of users will
26 disable the Java Script functionality . . . on their web browser."
27
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¶ 11 (p. 3): "Usually this is done for a variety of security reasons as some people feel that data transmitted via Java Scripting can potentially pose a variety of computer threats to their computer integrity."

¶ 13 (p. 4): "As with Java Script technology, many computer users for a variety of reasons, some related to security and some related to privacy, set their web browser to 'reject cookies.'"

¶ 14 (p. 4): "If a computer user rejects cookies such as that used by the Site, then that user will not see the Site's splash screen at all. Again, this is because the Site employs cookies to track computer users who access the site."

Defendants' Objection:

Lacks foundation and speculates as to the practices of third party computer users with regard to the use of Java Script and/or the rejection of cookies. Fed. R. Evid. 602.

Improper opinion testimony regarding third party computer user practices. Fed. R. Evid. 701.

Lacks foundation and improper opinion testimony regarding the use of cookies by DMV.ORG and the effect of a computer user's rejection of cookies. Fed. R. Evid. 602, 701.

☐ Sustained as to ¶ 9

☐ Overruled as to ¶ 9

☐ Sustained as to ¶ 11

☐ Overruled as to ¶ 11 (1st sentence)

☐ Sustained as to ¶ 11

☐ Overruled as to ¶ 11 (2nd sentence)

☐ Sustained as to ¶ 13

☐ Overruled as to ¶ 13

2.3. Practices of Third Party Websites

Testimony Offered:

¶ 15 (p. 4): "Therefore, Amazon.com as well as many other active multi-visitor websites, do not rely upon cookies or Java Script, but rather attach a

1 specific tracking number as part of the website URL when a visitor is linked to or
2 visits their site.

3 Defendants' Objections:

4 Lacks personal knowledge and foundation as to the web practices of
5 Amazon.com. Fed. R. Evid. 602.

6 ☐ Sustained as to ¶ 15 ☐ Overruled as to ¶ 15

7 **3. Declaration of Mina I. Hamilton**

8 Testimony Offered:

9 ¶ 13 (p. 4:25-5:2): "Attached hereto as Exhibit 'K' is a true and
10 accurate copy of an October 13, 2008 news article from the Los Angeles Times that
11 states (on the last page) the following:"

12 ¶ 14 (p. 5:3-6): "Attached hereto as Exhibit 'L' is a true and accurate
13 copy of a May 30, 2008 article from Information Week entitled 'Blackberry Leads,
14 iPhone Follows U.S. Smartphone Sales' discussing"

15 ¶ 15 (p. 5:7-11): "Attached hereto as Exhibit 'M' is a true and accurate
16 copy of a December 30, 3008 print-out from the website of The Internet Advertising
17 Bureau located at www.iab.net that states"

18 Defendants' Objection:

19 The quotations in each of the paragraphs cited as well as Exhibits K-M
20 comprise inadmissible hearsay. Fed. R. Evid. 801, 802.

21 ☐ Sustained as to ¶ 13 ☐ Overruled as to ¶ 13

22 ☐ Sustained as to ¶ 14 ☐ Overruled as to ¶ 14

23 ☐ Sustained as to ¶ 15 ☐ Overruled as to ¶ 15

24 **4. Declaration of Eric Creditor**

25 Testimony Offered:

26 ¶ 3 (p. 1:12-19): "In addition to checking my mobile device, by no
27 later than September 23, 2008, I had checked another twelve (12) different mobile
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1 devices of friends and family and the splash screen to the DMV.ORG website only
2 appeared when accessing the DMV.ORG website on two (2) Apple iPhones. For all
3 the other devices, which included three (3) different versions of the BlackBerry, four
4 (4) Palm Treo's [(other than mine, my wife's, or Mr. Kramer's); two with Palm OS
5 and two with Windows OS], and three (3) other Windows based smart phones, the
6 splash screen notice never came up.

7 ¶ 4 (p. 1:20-22): "In November, 2008, I again checked not only my
8 Palm Treo but my Office Manager's Palm Treo (Windows OS) and my sister's ATT
9 BlackBerry and the splash screen did not appear when accessing the DMV.ORG
10 website.

11 Defendants' Objection:

12 The testimony lacks foundation as it fails to identify the particular
13 models of the BlackBerry, Treo, and smart phones tested, which have a wide range
14 of web functionality. Fed. R. Evid. 602.

15 ☐ Sustained as to ¶ 3 ☐ Overruled as to ¶ 3
16 ☐ Sustained as to ¶ 4 ☐ Overruled as to ¶ 4

17 **5. Declaration of Daniel C. DeCarlo**

18 Testimony Offered:

19 ¶ 2 (p. 1:7-13): "I own a BlackBerry mobile device. Since the
20 beginning of September, 2008, when I was advised that BlackBerry devices are not
21 Java Script enabled, I have accessed the DMV.ORG website on my personal
22 BlackBerry at least a dozen times on various occasions in the months of October,
23 November, and December, 2008, with the latest being December 30, 2008. Each
24 time that I have accessed the DMV.ORG website through my mobile device, the
25 splash screen did not appear. Instead, I was able to immediately access and see the
26 content of the DMV.ORG website itself."

1 Defendants' Objections:


2 The testimony contains inadmissible hearsay as to the advice that
3 BlackBerry devices are not Java Script enabled. Fed. R. Evid. 801, 802.

4 The testimony lacks foundation as it fails to identify the particular
5 model of the BlackBerry tested, which have a wide range of web functionality. Fed.
6 R. Evid. 602.

7 ☐ **Sustained as to ¶ 2** ☐ **Overruled as to ¶ 2**

8
9 Dated: January 20, 2009

10 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

11
12 By 
13 BRIAN M. DAUCHER
14 ASHLEY E. MERLO

15 Attorneys for Defendants

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